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H. S. Buddy Garcia, *Commissioner*



Blas J. Coy, Jr., *Public Interest Counsel*

## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

July 16, 2007

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY  
JUL 16 PM 3:35  
CHIEF CLERKS OFFICE

LaDonna Castañuela, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: **CITY OF ALEDO**  
**TCEQ DOCKET NO. 2007-0020-MWD**

Dear Ms. Castañuela:

Enclosed for filing is the Public Interest Counsel's Response to Requests for Contested Case Hearing and Reconsideration in the above-entitled matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Garrett Arthur".

Garrett Arthur, Attorney  
Public Interest Counsel

cc: Mailing List

Enclosure

REPLY TO: PUBLIC INTEREST COUNSEL, MC 103 • P.O. BOX 13087 • AUSTIN, TEXAS 78711-3087 • 512-239-6363

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**TCEQ DOCKET NO. 2007-0020-MWD**

**APPLICATION BY CITY OF ALEDO  
TO AMEND TPDES PERMIT NO.  
WQ0010847001**

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**BEFORE THE TEXAS  
COMMISSION ON  
ENVIRONMENTAL QUALITY**

TEXAS  
COMMISSION ON  
ENVIRONMENTAL  
QUALITY  
JUL 16 PM 3:35  
CHIEF CLERK'S OFFICE

**OFFICE OF PUBLIC INTEREST COUNSEL'S RESPONSE TO  
REQUESTS FOR CONTESTED CASE HEARING AND RECONSIDERATION**

**To the Members of the Texas Commission on Environmental Quality:**

The Office of Public Interest Counsel (OPIC) of the Texas Commission on Environmental Quality (TCEQ or "Commission") files this response to the requests for contested case hearing and reconsideration.

**I. Introduction**

The City of Aledo ("Applicant") has applied to the TCEQ to amend the Texas Pollutant Discharge Elimination System (TPDES) permit for its municipal wastewater treatment facility. The amendment would authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 350,000 gallons per day (GPD) to a daily average flow not to exceed 600,000 GPD. This existing facility is located approximately 0.5 mile west of the intersection of FM 5 and FM 2376 in Parker County. The treated effluent is discharged to an unnamed tributary of the Clear Fork of the Trinity River and then to the Clear Fork of the Trinity River below Lake Weatherford in Segment No. 0831 of the Trinity River Basin. According to the Executive Director's (ED) technical summary, the unnamed tributary has no significant aquatic life uses, and the designated uses for Segment No. 0831 are high aquatic life uses, public water supply, and contact recreation.

The agency received this amendment application on April 28, 2006, and the application was declared administratively complete on June 5, 2006. The first notice (Notice of Receipt of

Application and Intent to Obtain Water Quality Permit Amendment) was published June 30, 2006 in *The Community News*. On September 29, 2006, the second notice (Notice of Application and Preliminary Decision for TPDES Permit for Municipal Wastewater Amendment) was published in *The Community News*. The public comment period closed October 30, 2006. The ED's Response to Comments (RTC) was filed December 1, 2006, and the hearing request/request for reconsideration period closed January 5, 2007.

The agency received two hearing requests and a request for reconsideration, all from Martin Siegmund.<sup>1</sup> OPIC recommends that the Commission grant Mr. Siegmund's hearing request, but deny his request for reconsideration.

## **II. Requests for Reconsideration**

### **A. Applicable Law**

Section 55.201(e) of the TCEQ procedural rules states that any person may file a request for reconsideration of the executive director's decision, and the request must expressly state that the person is requesting reconsideration of the executive director's decision and give reasons why the decision should be reconsidered.

Mr. Siegmund's request for reconsideration states that he has a common boundary of approximately 800 feet with the Applicant's facility, and the main working parts of the plant are 12-15 feet from his property line. He is concerned that the amendment would double the plant's capacity and thinks the existing plant is inadequate. He also states that at least four new items of the enlarged plant are in the one hundred year flood plain. Mr. Siegmund believes that the Applicant's property is not big enough to accommodate an expanded plant, and he would prefer a regional plant to service eastern Parker County. He additionally asserts that the plant has odor

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<sup>1</sup> Mr. Siegmund's initial letter appears to have been filed after the deadline for filing comments. However in the ED's RTC, this letter was treated as timely, and the ED responded to the comments contained in the letter. Therefore, OPIC will treat Mr. Siegmund's letter as both timely filed comments and a hearing request.

problems, the TCEQ is not requiring the proper buffer zone, and the Applicant's buffer zone map is incorrect. Finally, Mr. Siegmund disagrees that TCEQ has no control over noise problems and would like that to be part of the consideration process.

OPIC cannot support the issues raised by Mr. Siegmund as the basis for a request for reconsideration. An evidentiary record would be necessary for this office to make a recommendation to the Commission as to whether the permit amendment should be denied based on these issues.

### **III. Hearing Requests**

#### **A. Applicable Law**

This application was declared administratively complete after September 1, 1999, and is therefore subject to the procedural requirements adopted pursuant to House Bill 801 (76th Leg., 1999).

Under 30 TEX. ADMIN. CODE (TAC) § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and, where possible, fax number of the person who files the request;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and

- (5) provide any other information specified in the public notice of application.

Under 30 TAC § 55.203(a), an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest. Section 55.203(c) provides relevant factors to be considered in determining whether a person is affected. These factors include:

- (1) whether the interest claimed is one protected by the law under which the application will be considered;
- (2) distance restriction or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health, safety, and use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

Under 30 TAC § 55.211(c)(2), a hearing request made by an affected person shall be granted if the request:

- (A) raises disputed issues of fact that were raised during the comment period, that were not withdrawn by the commenter by filing a withdrawal letter with the chief clerk prior to the filing of the executive director's response to comment, and that are relevant and material to the commission's decision on the application;
- (B) is timely filed with the chief clerk;
- (C) is pursuant to a right to hearing authorized by law; and
- (D) complies with the requirements of § 55.201.

Accordingly, pursuant to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the Chief Clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

#### **B. Analysis of Martin Siegmund's Hearing Requests**

As previously stated, Mr. Siegmund submitted two hearing requests. The issues raised in the two hearing requests are substantially similar. However, in the second hearing request (received January 5, 2007), Mr. Siegmund raises for the first time two issues which were not raised during the comment period. The first issue concerns the one hundred year flood plain and the fact that a substantial portion of the Applicant's land and parts of the plant are in this flood plain. The second issue is Mr. Siegmund's assertion that the doubling of the plant capacity will effectively deny him the right to build houses along the fence, and this constitutes a taking of his property without compensation. According to 30 TAC § 55.201(d)(4), only issues which were raised during the public comment period can form the basis of a hearing request. The flood plain and taking issues were not raised during the public comment period, and OPIC will therefore exclude these two issues from this analysis.

### **1. Affected Person**

OPIC finds that Martin Siegmund qualifies as an affected person. His hearing request states that he shares a common property line of approximately 800 feet with the Applicant, and the main working parts of the plant are 12-15 feet from his property line. Mr. Siegmund disputes that the Applicant has the required buffer zone on his property. Additionally, he states that his land is used for raising pecans, grazing cattle, and family recreation, and he and his family are afraid to use the property that would be in a buffer zone. Mr. Siegmund's proximity to the plant and his interest in the use and enjoyment of his property provide a personal justiciable interest which is not common to members of the general public. OPIC therefore concludes that Mr. Siegmund does qualify as an affected person.

### **2. Relevant and Material Issues**

Mr. Siegmund disputes the following issues, which were raised during the public comment period and have not been withdrawn:

- (1) The Applicant does not have the required buffer zone on Mr. Siegmund's property. This issue concerns the buffer zone requirements in 30 TAC § 309.13 and is therefore relevant and material to the Commission's decision on the application.
- (2) Odor from the facility will negatively impact Mr. Siegmund and his family's use and enjoyment of their property. This issue concerns the nuisance odor prevention requirements in 30 TAC § 309.13 and is therefore relevant and material to the Commission's decision on the application.
- (3) Potential chlorine leaks from the facility pose a danger to Mr. Siegmund. The use of chlorine at this site is the subject of one of the proposed amendments, and this



issue is therefore relevant and material to the Commission's decision on the application.

- (4) The construction of a regional wastewater treatment plant at a different location is a better alternative than expansion of the Applicant's existing plant. This issue concerns the Commission's regionalization policy as expressed in Texas Water Code §§ 26.003, 26.0282, and 26.081 and is therefore relevant and material to the Commission's decision on the application.

Mr. Siegmund additionally raises the issue of noise from the facility, and he asserts that the Applicant's property is too small for a plant with expanded capacity. The Commission does not have jurisdiction to address either of these issues, and the issues are therefore not relevant and material to the Commission's decision on this application.

#### **IV. Conclusion**

For the reasons set forth above, OPIC respectfully recommends that the Commission grant Martin Siegmund's hearing request and deny his request for reconsideration.

OPIC further recommends that the following issues be referred to the State Office of Administrative Hearings for a contested case hearing:

- (1) Does the City of Aledo have the required buffer zone on Mr. Siegmund's property?
- (2) Will odor from the facility negatively impact Mr. Siegmund and his family's use and enjoyment of their property?
- (3) Do potential chlorine leaks from the facility pose a danger to Mr. Siegmund?

- (4) Would the construction of a regional wastewater treatment plant at a different location be a better alternative than increasing the capacity of the City of Aledo's existing plant?

OPIC expects a maximum duration of 6 months for the contested case hearing.

Respectfully submitted,

Blas J. Coy, Jr.  
Public Interest Counsel

By: 

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#### **CERTIFICATE OF SERVICE**

I hereby certify that on July 11, 2007, the original and eleven true and correct copies of the foregoing document were filed with the TCEQ Chief Clerk, and copies were served to all parties listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.

  
Garrett Arthur

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TCEQ DOCKET NO. 2007-0020-MWD**

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